

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MAY 10, 2016

AMENDED IN ASSEMBLY APRIL 20, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2251**

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**Introduced by Assembly Member Mark Stone**  
**(~~Coauthor: Assembly Member Dababneh~~)**  
**(Coauthors: Assembly Members Dababneh and Gonzalez)**  
(Coauthor: Senator Leno)

February 18, 2016

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An act to add Division 12.5 (commencing with Section 28100) to the Financial Code, relating to student loan servicers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2251, as amended, Mark Stone. Student loan servicers: licensing and regulation: Student Loan Borrower's Bill of Rights.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses, including, but not limited to, the business of making consumer or commercial loans.

This bill would enact the Student Loan Borrower's Bill of Rights providing for the licensure, regulation, and oversight of student loan servicers engaging in the servicing of student loans for borrowers, as those terms are defined, by the commissioner. The bill would prohibit

a person from acting as a student loan servicer without a license, unless exempt from the licensing ~~requirement~~ *requirement*, and would require a licensee to provide specific services to a student loan borrower. The bill would require a person applying for a license to, among other things, pay the actual costs for processing an application and the investigation of the application, sign the application under penalty of perjury, and submit to a criminal background check by the Department of Justice. By expanding the scope of the crime of perjury and increasing who is authorized to receive criminal record information, this bill would impose a state-mandated local program. The bill would specify the basis for the commissioner to deny, revoke, or suspend a license that includes, among other ~~basis~~, *bases*, a failure to comply with an investigation by the commissioner. The bill would make legislative findings in support of its provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) Student loan debt is a national crisis. More than 40,000,000  
4 people in the United States owe some amount of student  
5 educational loan debt. Total student educational debt in the United  
6 States currently exceeds \$1.2 trillion, surpassing both the amount  
7 of credit card debt and car loans. With college costs continuing to  
8 rise, student educational debt continues to rise, and there is no  
9 reduction in sight.  
10 (b) While California's financial aid programs are some of the  
11 strongest in the nation and our state's college graduates have among  
12 the lowest educational debt burdens, California students and  
13 graduates still incur significant debt. According to The Institute  
14 for College Access & Success, 55 percent of California's  
15 graduating class of 2014 has student educational loan debt.  
16 According to the United States Department of Education, as of

1 January 2015, there were approximately ~~4,156,00~~ 4,156,000 student  
2 educational loan borrowers in California, and the total student  
3 educational loan debt outstanding for Californians was  
4 approximately \$1.2 billion.

5 (c) Student educational loan debt is a hindrance on the state's  
6 economy, preventing borrowers from achieving financial  
7 independence, buying property, and starting businesses.

8 (d) Student educational loan servicers administer student loans,  
9 serving as a critical link between borrowers and lenders in  
10 managing accounts, processing payments, and communicating  
11 directly with borrowers. Despite this critical relationship, according  
12 to the federal Consumer Financial Protection Bureau (CFPB), there  
13 are no consistent, marketwide federal standards for student  
14 educational loan servicing.

15 (e) The CFPB released a report in September 2015 that found  
16 that student educational loan borrowers encounter servicers that  
17 discourage borrower-friendly alternative payment plans, fail to  
18 respond to questions and payment processing errors, and fail to  
19 provide sufficient information to borrowers regarding payments,  
20 benefits, interest rates, and other charges.

21 (f) It is the intent of the Legislature to promote all of the  
22 following:

23 (1) Meaningful access to federal affordable repayment and loan  
24 forgiveness benefits.

25 (2) Reliable information about student educational loans and  
26 loan repayment options.

27 (3) Quality customer service and fair treatment.

28 SEC. 2. Division 12.5 (commencing with Section 28100) is  
29 added to the Financial Code, to read:

30  
31 **DIVISION 12.5. CALIFORNIA STUDENT LOAN**  
32 **BORROWER'S BILL OF RIGHTS**

33  
34 **CHAPTER 1. GENERAL PROVISIONS**

35  
36 **Article 1. Short Title**  
37

38 28100. This division may be known and cited as the "California  
39 Student Loan Borrower's Bill of Rights."

## Article 2. Requirement for License

28102. (a) A person shall only act as a student loan servicer, directly or indirectly, as a licensee pursuant to this division. A license shall not be transferable or assignable.

(b) Notwithstanding subdivision (a), any of the following shall not be required to be a licensee to engage in servicing a student loan to borrowers:

(1) A person authorized to service student loans to borrowers pursuant to federal law.

(2) A bank, trust company, insurance company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(3) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(4) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

## Article 3. Definitions

28104. For the purposes of this division, the following terms have the following meanings:

(a) "Applicant" means a person applying for a license pursuant to this division.

(b) "Borrower" means either of the following:

(1) A person who is a resident of the state who has received or agreed to pay a student loan.

(2) A person who is a resident of the state who shares responsibility for repaying a student loan with a person described in paragraph (1).

1 (c) “Commissioner” means the Commissioner of Business  
2 Oversight.

3 (d) “Control” means the possession, directly or indirectly, of  
4 the power to direct, or cause the direction of, the management and  
5 policies of a licensee under this division, whether through voting  
6 or through the ownership of voting power of an entity that  
7 possesses voting power of the licensee, or otherwise. Control is  
8 presumed to exist if a person, directly or indirectly, owns, controls,  
9 or holds 10 percent or more of the voting power of a licensee or  
10 of an entity that owns, controls, or holds, with power to vote, 10  
11 percent or more of the voting power of a licensee. A person shall  
12 not be deemed to control a licensee solely by reason of his or her  
13 status as an officer or director of the licensee.

14 (e) “Department” means the Department of Business Oversight.

15 (f) “Licensee” means a natural person licensed under this  
16 division.

17 (g) “Person” means a natural person, a sole proprietorship, a  
18 corporation, a partnership, a limited liability company, an  
19 association, a trust, a joint venture, an unincorporated organization,  
20 a joint stock company, a government, or a political subdivision of  
21 a government, and any other entity.

22 (h) “Qualified written request” means a written correspondence  
23 made by a borrower, other than notice on a payment medium  
24 supplied by a licensee, transmitted by mail, facsimile, or  
25 electronically through an email address or Internet Web site  
26 designated by the licensee to receive communications from  
27 borrowers that does all of the following:

28 (1) Enables the licensee to identify the name and account of the  
29 borrower.

30 (2) Includes, to the extent applicable, either of the following:

31 (A) Sufficient detail regarding the information sought by the  
32 borrower.

33 (B) A statement of the reasons for the belief of the borrower  
34 that there is an error regarding the account of the borrower.

35 (i) “Servicing” means any of the following activities related to  
36 a student loan of a borrower:

37 (1) Performing both of the following:

38 (A) Receiving any scheduled periodic payments from a borrower  
39 or any notification that a borrower made a scheduled periodic  
40 payment.

(B) Applying payments to the borrower's account pursuant to the terms of the student loan or the contract governing the servicing.

(2) During a period when no payment is required on a student loan, performing both of the following:

(A) Maintaining account records for the student loan.

(B) Communicating with the borrower regarding the student loan on behalf of the student loan's holder.

(3) Interactions with a borrower, including, but not limited to, activities to help prevent default on obligations arising from a student loan or conducted to facilitate the activities described in paragraph (1) or (2).

(j) "Student loan" means any loan primarily for personal use to finance education or other school-related expenses.

(k) "Student loan servicer" means, to the extent authorized by federal law, a person responsible for servicing a student loan for a borrower.

## CHAPTER 2. LICENSING

### Article 1. Commissioner of Business Oversight

28108. (a) The commissioner shall administer the provisions of this division.

(b) The commissioner may promulgate regulations and issue orders to further the purposes of this division.

28110. (a) The commissioner shall have the authority to conduct investigations and examinations of an applicant or licensee as follows:

(1) For purposes of determining whether an applicant is eligible for a license, or that a licensee is complying with the provisions of this division or any regulation or order of the commissioner, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, any of the following relating to the intent to, or the practice of, servicing student loans for borrowers:

(A) Criminal, civil, and administrative history information.

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer credit reporting agency.

1 (C) Any other documents, information, or evidence that the  
2 commissioner deems relevant to the inquiry or investigation  
3 regardless of the location, possession, control, or custody of those  
4 documents, information, or evidence.

5 (2) For the purposes of investigating violations or complaints  
6 arising under this division, the commissioner may direct, subpoena,  
7 or order the attendance of, and examine under oath, any person  
8 whose testimony may be required about the student loan or account  
9 of the borrower.

10 (b) In making any examination or investigation authorized by  
11 this section, the commissioner may control access to any documents  
12 and records of the licensee or person under examination or  
13 investigation. The commissioner may take possession of the  
14 documents and records or place a person in exclusive charge of  
15 the documents and records in the place where they are usually  
16 kept. During the period of control, no person shall remove or  
17 attempt to remove any of the documents and records except  
18 pursuant to a court order or with the consent of the commissioner.  
19 Unless the commissioner has reasonable grounds to believe the  
20 documents or records of a licensee have been, or are at risk of  
21 being, altered or destroyed for purposes of concealing a violation  
22 of this division, the licensee or owner of the documents and records  
23 shall have access to the documents or records as necessary to  
24 conduct its ordinary business affairs.

25 (c) The commissioner may charge an applicant or a licensee the  
26 actual costs for conducting an examination pursuant to this division.

27  
28 Article 2. Application for License  
29

30 28112. (a) Only a natural person is eligible to be an applicant  
31 and be licensed pursuant to this division.

32 (b) An applicant shall apply for a license by submitting all of  
33 the following to the commissioner:

34 (1) A completed application for a license in a form prescribed  
35 by the commissioner and signed under penalty of perjury.

36 (2) A license fee determined by the commissioner that is  
37 reasonable to pay the department's actual costs to process and  
38 investigate the application.

39 28114. (a) The commissioner shall submit to the Department  
40 of Justice fingerprint images and related information required by

1 the Department of Justice of every applicant for a license pursuant  
2 to Section 28112, for purposes of obtaining information as to the  
3 existence and content of a record of state or federal convictions,  
4 state or federal arrests, and information as to the existence and  
5 content of a record of state or federal arrests for which the  
6 Department of Justice establishes that the person is free on bail or  
7 on his or her own recognizance pending trial or appeal.

8 (b) When received, the Department of Justice shall forward to  
9 the Federal Bureau of Investigation requests for federal summary  
10 criminal history information received pursuant to this section. The  
11 Department of Justice shall review the information returned from  
12 the Federal Bureau of Investigation and compile and disseminate  
13 a response to the commissioner.

14 (c) The Department of Justice shall provide a response to the  
15 commissioner pursuant to paragraph (1) of subdivision (p) of  
16 Section 11105 of the Penal Code.

17 (d) The commissioner shall request from the Department of  
18 Justice subsequent arrest notification service, as provided pursuant  
19 to Section 11105.2 of the Penal Code, for the license applicant  
20 described in subdivision (a).

21 (e) The Department of Justice shall charge the department a fee  
22 sufficient to cover the costs of processing the requests pursuant to  
23 this section.

24 28116. The commissioner shall, within 60 days from the date  
25 an application pursuant to Section 28112 is complete, including  
26 having received the information from the Department of Justice  
27 pursuant to Section 28114, either grant a license pursuant to this  
28 division or provide a written explanation for the denial.

29 28118. (a) The proceedings for a denial of a license shall be  
30 conducted in accordance with Chapter 5 (commencing with Section  
31 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

32 (b) The commissioner may deny an application for a license for  
33 any of the following reasons:

34 (1) The applicant made a false statement of a material fact on  
35 the application.

36 (2) The applicant or a person with control over the applicant,  
37 within the last 10 years of the date of application, has committed  
38 any act involving dishonesty, fraud, or deceit, or has been convicted  
39 of, or pleaded nolo contendere to, a crime substantially related to  
40 the qualifications, functions, or duties related to servicing.

1 (3) The applicant or a person with control over the applicant  
2 has violated any provision of this division.

3 28120. (a) The commissioner may deem an application for a  
4 license abandoned if the applicant fails to respond to any request  
5 for information required by the commissioner or department during  
6 an investigation of the application.

7 (b) The commissioner shall notify the applicant, in writing, that  
8 if the applicant fails to submit responsive information no later than  
9 60 days after the date the commissioner sent the written request  
10 for information, the commissioner shall deem the application  
11 abandoned.

12 (c) An application fee paid prior to the date an application is  
13 deemed abandoned shall not be refunded. Abandonment of an  
14 application pursuant to this subdivision shall not preclude the  
15 applicant from submitting a new application and fee for a license.

16 28122. A license shall remain effective until the license is  
17 either suspended or revoked by the commissioner or surrendered  
18 by the licensee.

19 28124. The commissioner may suspend or revoke a license  
20 issued under this division if the commissioner finds that the  
21 licensee violated any provision of this division or if any fact or  
22 condition exists that, if it had existed at the time of the initial  
23 application for the license, clearly would have warranted a denial  
24 of the license.

25 28126. A licensee that ceases to service student loans to  
26 borrowers shall inform the commissioner in writing and surrender  
27 the license and all other indicia of license to the commissioner.  
28 The commissioner may require a licensee to file a plan for the  
29 disposition of the servicing business that includes, but is not limited  
30 to, a closing audit. Upon receipt of the written notice and plan, if  
31 required, the commissioner shall determine whether the licensee  
32 has violated this division. The commissioner shall give a licensee  
33 notice of accepting a surrendered license, and a license shall not  
34 be deemed surrendered until the commissioner accepts its tender  
35 in writing.

36  
37 CHAPTER 3. LICENSEE DUTIES  
38

39 28128. A licensee shall notify the commissioner, in writing,  
40 of any change in the information provided in the application for a

1 license, as applicable, not later than 10 business days after the  
2 occurrence of the event that results in the information becoming  
3 inaccurate or incomplete.

4 28130. A licensee shall only provide servicing at the place of  
5 business on the license. A licensee shall obtain prior written  
6 permission from the commissioner to add or change business  
7 locations authorized to operate under the license.

8 28132. A licensee shall do all of the following:

9 (a) Maintain staff adequate to meet the requirements of this  
10 division and every regulation and order of the commissioner.

11 (b) File with the commissioner any report required by regulation  
12 or order of the commissioner.

13 (c) Comply with the provisions of this division and any  
14 regulation or order of the commissioner.

15 (d) Submit to periodic examination by the commissioner as  
16 required by this division and any regulation or order of the  
17 commissioner.

18 (e) Advise the commissioner of filing a petition for bankruptcy  
19 within five days of the filing.

20 (f) Comply with all applicable state and federal laws and tax  
21 return filing requirements.

22 (g) Comply with any other requirement established by regulation  
23 or order of the commissioner.

24 (h) Provide information on a publicly accessible Internet Web  
25 site concerning affordable repayment and loan forgiveness options  
26 that may be available to borrowers and provide to borrowers, at  
27 least once per calendar year, a written correspondence or email  
28 describing those options, as applicable.

29 (i) Appoint a single point of contact for a borrower wanting any  
30 of the following:

31 (1) Ability to enter into an agreement for, resolution on an issue  
32 concerning, or general information about a repayment option that  
33 requires subsequent submission of supporting documentation.

34 (2) Modification of the terms of repayment of the student  
35 education loan because of hardship.

36 (j) If the sale, assignment, or other transfer of the servicing of  
37 a student loan results in a change in the identity of the party to  
38 whom the borrower is required to send payments, or direct any  
39 communications concerning the student loan to, then the licensee  
40 shall notify the borrower in writing at least 45 days before a

1 borrower is required to send a payment on the student loan of all  
2 of the following:

3 (1) The identity of the new student loan servicer.

4 (2) The name and address of the new student loan servicer to  
5 whom subsequent payments or communications *is are* required to  
6 be sent.

7 (3) The telephone numbers and Internet Web sites of the new  
8 student loan servicer.

9 (4) The effective date of the sale, assignment, or transfer.

10 (5) The date on which the current student loan servicer will stop  
11 accepting payments on the borrower's student loan.

12 (6) The date on which the new student loan servicer will begin  
13 accepting payments on the borrower's student loan.

14 (k) Respond to a qualified written request by acknowledging  
15 receipt of the request within five business days and within 30  
16 business days provide, to the extent possible, information relating  
17 to the request and the applicable action the licensee will take to  
18 correct the account or an explanation for the licensee's position  
19 that the borrower's account is correct.

20 (l) Unless otherwise directed by the borrower of a student loan,  
21 upon receipt of a payment, the licensee shall apply amounts in  
22 excess of the minimum payment amount first to the interest and  
23 fees owed on the payment due date, next to the principal balance  
24 of the student loan balance bearing the highest annual percentage  
25 rate, and then to each successive interest and fees and principal  
26 balance bearing the next highest annual percentage rate until the  
27 payment is exhausted. A borrower may instruct or expressly  
28 authorize a licensee to apply excess payments in a different manner.  
29 A borrower may also voluntarily increase the periodic payment  
30 amount by various means, including, but not limited to, increasing  
31 his or her recurring electronic payment with the right to return to  
32 the original amortization schedule at any time.

33 28134. The licensee shall not do any of the following:

34 (a) Directly or indirectly employ any scheme, device, or artifice  
35 to defraud or mislead a borrower.

36 (b) Engage in any unfair or deceptive practice toward any  
37 borrower or misrepresent or omit any material information in  
38 connection with the servicing of a student loan, including, but not  
39 limited to, misrepresenting the amount, nature, or terms of any fee  
40 or payment due or claimed to be due on a student loan, the terms

1 and conditions of the student loan agreement, or the borrower's  
2 obligations under the student loan.

3 (c) Obtain property of a borrower by fraud or misrepresentation.

4 (d) Knowingly misapply or recklessly apply payments made by  
5 a borrower to the outstanding balance of a student loan.

6 (e) Knowingly or recklessly provide inaccurate information to  
7 a credit bureau regarding a borrower.

8 (f) Fail to report both the favorable and unfavorable payment  
9 history of the borrower to a nationally recognized consumer credit  
10 bureau at least annually if the licensee regularly reports information  
11 to a credit bureau.

12 (g) Refuse to communicate with an authorized representative  
13 of the borrower who provides a written authorization signed by  
14 the borrower, provided the licensee may adopt procedures  
15 reasonably related to verifying that the representative is in fact  
16 authorized to act on behalf of the borrower.

17 (h) Negligently or intentionally make any false statement or  
18 knowingly and willfully make any omission of a material fact in  
19 connection with any information or reports filed with the  
20 commissioner, the department, or another governmental agency.

21 28136. The licensee shall retain and maintain its records of  
22 servicing a borrower's student loan for a minimum of three years  
23 after the student loan has been transferred, assigned, or paid in  
24 full.

#### 25 CHAPTER 4. ENFORCEMENT

26  
27  
28 28138. (a) If the commissioner has a reasonable basis to  
29 believe that a licensee is violating or failing to comply with any  
30 law of this state, including, but not limited to, this division or any  
31 regulation or order of the commissioner, or servicing student loans  
32 in an unsafe or injurious manner, then the commissioner may direct  
33 the licensee to comply with the law by an order issued by the  
34 commissioner. The order shall require the licensee to show cause  
35 before the commissioner, at a time and place to be fixed by the  
36 commissioner, as to why the order should not be observed.

37 (b) If, upon any hearing held pursuant to this section, the  
38 commissioner finds that the licensee is violating or failing to  
39 comply with any law of this state or servicing student loans in an  
40 unsafe or injurious manner, the commissioner may make a final

1 order directing the licensee to comply with the law or discontinue  
2 the unsafe or injurious practices. A licensee shall comply with the  
3 final order unless, within 10 days after the issuance of the order,  
4 its enforcement is restrained in a proceeding brought by the  
5 licensee.

6 28140. (a) The commissioner may issue an order suspending  
7 or revoking a license if, after notice and an opportunity for hearing,  
8 the commissioner finds any of the following:

9 (1) The licensee is violating this division or a regulation adopted  
10 or an order issued under this division.

11 (2) The licensee does not cooperate with an examination or  
12 investigation by the commissioner.

13 (3) The licensee engages in fraud, intentional misrepresentation,  
14 or gross negligence in servicing a student loan.

15 (4) The competence, experience, character, or general fitness  
16 of the licensee, or any director, officer, employee, or person in  
17 control of a licensee, indicates that it is not in the public interest  
18 to permit the licensee to continue servicing student loans.

19 (5) The licensee engages in an unsafe or unsound practice.

20 (6) The licensee is insolvent, suspends payment of its  
21 obligations, or makes a general assignment for the benefit of its  
22 creditors.

23 (7) Any fact or condition exists that, if it had existed at the time  
24 the licensee applied for the license, would have been grounds for  
25 denying the application.

26 (b) In determining whether a licensee is engaging in an unsafe  
27 or unsound practice, the commissioner may consider the size and  
28 condition of the licensee's provision of servicing, the magnitude  
29 of the loss, the gravity of the violation of this division, and the  
30 previous conduct of the persons involved.

31 28142. The commissioner may assess a civil penalty against  
32 a person that violates this division, or a regulation promulgated or  
33 order issued by the commissioner pursuant to this division, in an  
34 amount not to exceed one thousand dollars (\$1,000) for each  
35 violation or, in the case of a continuing violation, one thousand  
36 dollars (\$1,000) for each day or part thereof during which the  
37 violation continues, plus the department's actual costs and expenses  
38 for the investigation and prosecution of the matter, including, but  
39 not limited to, reasonable attorney's fees.

## CHAPTER 5. MISCELLANEOUS

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2  
3 28144. If any provision of this division or the application  
4 thereof to any person or circumstances is held invalid, illegal, or  
5 unenforceable, such invalidity, illegality, or unenforceability shall  
6 not affect other provisions or applications of this division which  
7 can be given effect without the invalid, illegal, or unenforceable  
8 provision or application, and, to this end, the provisions of this  
9 division are declared to be severable.

10 28146. The rights and remedies provided in this division are  
11 in addition to any other rights and remedies provided by law.

12 SEC. 3. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.